

ENTERED

April 08, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ARNOLD GUTIERREZ,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 2:23-CV-00329

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

On March 5, 2024, United States Magistrate Judge Mitchel Neurock issued his “Memorandum and Recommendation of United States Magistrate Judge” (D.E. 11), recommending that this action be dismissed without prejudice because: (1) Petitioner has failed to follow the Local Rules to maintain an accurate address on file; (2) Petitioner has failed to comply with Court orders pertaining to paying the filing fee or filing an appropriately documented application to proceed *in forma pauperis*; and (3) Petitioner has failed to respond to a show cause order. Petitioner was provided proper notice of, and opportunity to object to, the Magistrate Judge’s memorandum and recommendation by notice sent to the address on file. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); General Order No. 2002-13. The notice has been returned to the Court as undeliverable and no objections have been timely filed.

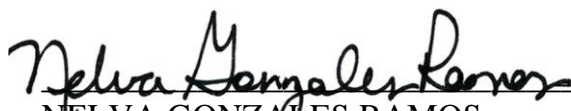
When no timely objection to a magistrate judge’s memorandum and recommendation is filed, the district court need only satisfy itself that there is no clear error on the face of the record and accept the magistrate judge’s memorandum and recommendation. *Guillory v. PPG*

Indus., Inc., 434 F.3d 303, 308 (5th Cir. 2005) (citing *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996)).

Having reviewed the findings of fact and conclusions of law set forth in the Magistrate Judge's memorandum and recommendation (D.E. 11), and all other relevant documents in the record, and finding no clear error, the Court **ADOPTS** as its own the findings and conclusions of the Magistrate Judge. Accordingly, Petitioner's unsupported motion to proceed in forma pauperis (D.E. 2) is **DENIED** as moot and this action is **DISMISSED WITHOUT PREJUDICE**.

In order to obtain a certificate of appealability (COA) when the petition is dismissed on procedural grounds, a petitioner must show, "at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack*, 529 U.S. at 484 (emphasis added). In Petitioner's case before this Court, reasonable jurists would not find debatable or wrong the conclusion that petitioner has failed to prosecute his claim and it is subject to dismissal sua sponte. The law in these areas is settled and not subject to debate. Petitioner has not made the necessary showing for issuance of a COA. In the event that Petitioner requests a certificate of appealability, that request is **DENIED**.

ORDERED on April 8, 2024.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE